



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 22, 2023

IN THE MATTER OF:

Appeal Board No. 627056

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective June 15, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by YOUNG MENS CHRISTIAN prior to June 15, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed December 12, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a resident security worker for this employer for over one year until July 15, 2022. The employer's policy provided that an employee must notify their supervisor within 24 hours of being charged with a crime, and that a failure to do so would result in disciplinary action including termination. The claimant received the policy but did not read it.

On July 12, 2022, the claimant was arrested and charged with criminal mischief in the third-degree, a felony, relating to a domestic incident. The claimant

did not notify his supervisor about his arrest. On July 15, the claimant's spouse, who made the complaint against him and who also worked for the employer, reported the incident to the employer. That same day, the employer discharged the claimant for failing to notify the employer within 24 hours of his arrest.

OPINION: The credible evidence establishes that the employer discharged the claimant because he did not notify the employer within 24 hours about his July 12, 2022 arrest for felony criminal mischief. The employer's arrest reporting policy was reasonable given the claimant's position as a security worker. The claimant has not provided a compelling reason for not reporting his July 12 arrest within 24 hours. That his spouse reported the incident after 24 hours of his arrest does not excuse his failure. As he had constructive knowledge of the employer's policy, he knew or should have known that his failure to report the arrest could result in discharge (See Appeal Board No. 590838). Accordingly, we conclude that the claimant's behavior constitutes misconduct for unemployment insurance purposes.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective June 15, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to June 15, 2022 cannot be used toward the establishment of a claim for benefits, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER